

section directly or through contracts with public and private agencies, organizations, and institutions.

“(b) CONSULTATION.—

“(1) IN GENERAL.—To ensure timely and meaningful consultation, a local educational agency shall consult with appropriate private school officials during the design and development of such agency's programs under this part, on issues such as—

“(A) how the children's needs will be identified;

“(B) what services will be offered;

“(C) how, where, and by whom the services will be provided;

“(D) how the services will be academically assessed and how the results of that assessment will be used to improve those services;

“(E) the size and scope of the equitable services to be provided to the eligible private school children, and the amount of funds generated by low-income private school children in each participating attendance area;

“(F) the method or sources of data that are used under subsection (a)(4) and section 1113(c)(2) to determine the number of children from low-income families in participating school attendance areas who attend private schools; and

“(G) how and when the agency will make decisions about the delivery of services to such children, including a thorough consideration and analysis of the views of the private school officials on the provision of contract services through potential third party providers.

If the local educational agency disagrees with the views of the private school officials on the provision of services, through a contract, the local educational agency shall provide in writing to such private school officials, an analysis of the reasons why the local educational agency has chosen not to use a contractor.

“(2) TIMING.—Such consultation shall include meetings of agency and private school officials and shall occur before the local educational agency makes any decision that affects the opportunities of eligible private school children to participate in programs under this part. Such meetings shall continue throughout implementation and assessment of services provided under this section.

“(3) DISCUSSION.—Such consultation shall include a discussion of service delivery mechanisms a local educational agency can use to provide equitable services to eligible private school children.

“(4) DOCUMENTATION.—Each local educational agency shall maintain in its records and provide to the State educational agency a written affirmation signed by officials of each participating private school that the consultation required by this section has occurred.

“(5) COMPLIANCE.—Private school officials shall have the right to appeal to the State as to whether the consultation provided for in this section was meaningful and timely, and that due consideration was given to the views of private school officials. If the private school wishes to appeal, the basis of the claim of noncompliance with this section by a local educational agency shall be provided to the State, and the local educational agency shall forward the documentation provided in subsection (b)(4) to the State.

“(c) PUBLIC CONTROL OF FUNDS.—

“(1) IN GENERAL.—The control of funds provided under this part, and title to materials, equipment, and property purchased with such funds, shall be in a public agency, and a public agency shall administer such funds and property.

“(2) PROVISION OF SERVICES.—(A) The provision of services under this section shall be provided—

“(i) by employees of a public agency; or

“(ii) through contract by such public agency with an individual, association, agency, or organization.

“(B) In the provision of such services, such employee, person, association, agency, or organization shall be independent of such private school and of any religious organization, and such employment or contract shall be under the control and supervision of such public agency.

“(d) STANDARDS FOR A BYPASS.—If a local educational agency is prohibited by law from providing for the participation on an equitable basis of eligible children enrolled in private elementary and secondary schools or if the Secretary determines that a local educational agency has substantially failed or is unwilling to provide for such participation, as required by this section, the Secretary shall—

“(1) waive the requirements of this section for such local educational agency;

“(2) arrange for the provision of services to such children through arrangements that shall be subject to the requirements of this section and sections 8505 and 8506; and

“(3) in making the determination, consider 1 or more factors, including the quality, size, scope, and location of the program and the opportunity of eligible children to participate.

“(e) CAPITAL EXPENSES.—

“(1) IN GENERAL.—(A) From the amount appropriated for this subsection under section 1002(g) for any fiscal year, each State is eligible to receive an amount that bears the same ratio to the amount so appropriated as the number of private school children who received services under this part in the State in the most recent year for which data satisfactory to the Secretary are available bears to the number of such children in all States in that same year.

“(B) The Secretary shall reallocate any amounts allocated under subparagraph (A) that are not used by a State for the purpose of this subsection to other States on the basis of their respective needs, as determined by the Secretary.

“(2) CAPITAL EXPENSES.—(A) A local educational agency may apply to the State educational agency for payments for capital expenses consistent with this subsection.

“(B) State educational agencies shall distribute such funds under this subsection to local educational agencies based on the degree of need set forth in their respective applications for assistance under this subsection.

“(3) USES OF FUNDS.—Any funds appropriated to carry out this subsection shall be used only for capital expenses incurred to provide equitable services for private school children under this section.

“SEC. 1120A. FISCAL REQUIREMENTS.

“(a) MAINTENANCE OF EFFORT.—A local educational agency may receive funds under this part for any fiscal year only if the State educational agency finds that the local educational agency has maintained its fiscal effort in accordance with section 8501 of this Act.

“(b) FEDERAL FUNDS TO SUPPLEMENT, NOT SUPPLANT, NON-FEDERAL FUNDS.—

“(1) IN GENERAL.—A State or local educational agency shall use funds received under this part only to supplement the amount of funds that would, in the absence of such Federal funds, be made available from non-Federal sources for the education of pupils participating in programs assisted under this part, and not to supplant such funds.

“(2) SPECIAL RULE.—No local educational agency shall be required to provide services under this part through a particular instructional method or in a particular instructional setting in order to demonstrate such agency's compliance with paragraph (1).

“(c) COMPARABILITY OF SERVICES.—

“(1) IN GENERAL.—(A) Except as provided in paragraphs (4) and (5), a local educational agency may receive funds under this part only if State and local funds will be used in schools served under this part to provide services that, taken as a whole, are at least comparable to services in schools that are not receiving funds under this part.

“(B) If the local educational agency is serving all of such agency's schools under this part, such agency may receive funds under this part only if such agency will use State and local funds to provide services that, taken as a whole, are substantially comparable in each school.

“(C) A local educational agency may meet the requirements of subparagraphs (A) and (B) on a grade-span by grade-span basis or a school-by-school basis.

“(2) WRITTEN ASSURANCE.—(A) A local educational agency shall be considered to have met the requirements of paragraph (1) if such agency has filed with the State educational agency a written assurance that such agency has established and implemented—

“(i) a local educational agency-wide salary schedule;

“(ii) a policy to ensure equivalence among schools in teachers, administrators, and other staff; and

“(iii) a policy to ensure equivalence among schools in the provision of curriculum materials and instructional supplies.

“(B) For the purpose of subparagraph (A), in the determination of expenditures per pupil from State and local funds, or instructional salaries per pupil from State and local funds, staff salary differentials for years of employment shall not be included in such determinations.

“(C) A local educational agency need not include unpredictable changes in student enrollment or personnel assignments that occur after the beginning of a school year in determining comparability of services under this subsection.

“(3) PROCEDURES AND RECORDS.—Each local educational agency assisted under this part shall—

“(A) develop procedures for compliance with this subsection; and

“(B) maintain records that are updated biennially documenting such agency's compliance with this subsection.

“(4) INAPPLICABILITY.—This subsection shall not apply to a local educational agency that does not have more than 1 building for each grade span.

“(5) COMPLIANCE.—For the purpose of determining compliance with paragraph (1), a local educational agency may exclude State and local funds expended for—

“(A) English language instruction for children of limited English proficiency; and

“(B) excess costs of providing services to children with disabilities as determined by the local educational agency.

“(d) EXCLUSION OF FUNDS.—For the purpose of complying with subsections (b) and (c), a State or local educational agency may exclude supplemental State or local funds expended in any school attendance area or school for programs that meet the intent and purposes of this part.

“SEC. 1120B. COORDINATION REQUIREMENTS.

“(a) IN GENERAL.—Each local educational agency receiving assistance under this part shall carry out the activities described in subsection (b) with Head Start Agencies, and if feasible, other early childhood development programs such as Early Reading First.

“(b) ACTIVITIES.—The activities referred to in subsection (a) are activities that increase coordination between the local educational agency and a Head Start agency, and, if feasible, other early childhood development programs, such as Early Reading First serving children who will attend the schools of such agency, including—

“(1) developing and implementing a systematic procedure for receiving records regarding such children transferred with parental consent from a Head Start program or, where applicable, other early childhood development programs such as Early Reading First;

“(2) establishing channels of communication between school staff and their counterparts in such Head Start agencies (including teachers, social workers, and health staff) or other early